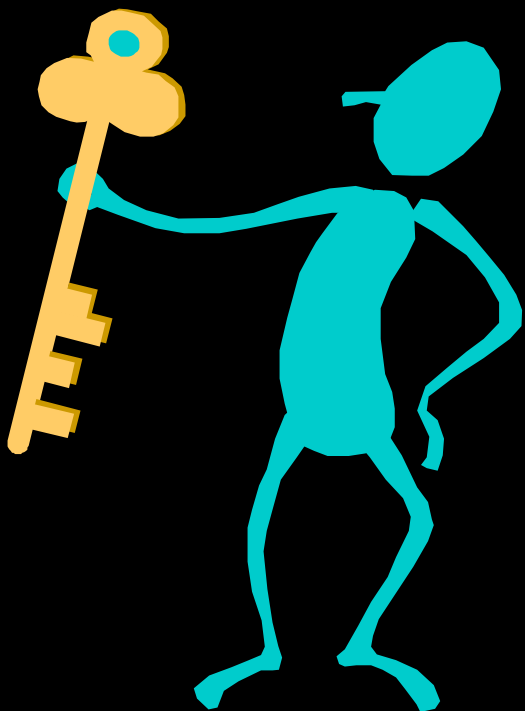


# Privacy Act at NIH



Tim Wheelles

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# Why Have a Privacy Act?

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- Constitutional right to privacy
- Affected by collection, maintenance, use and dissemination by Federal agencies
- Use of computers/telecommunications/www  
(greater distribution = potential for greater harm)

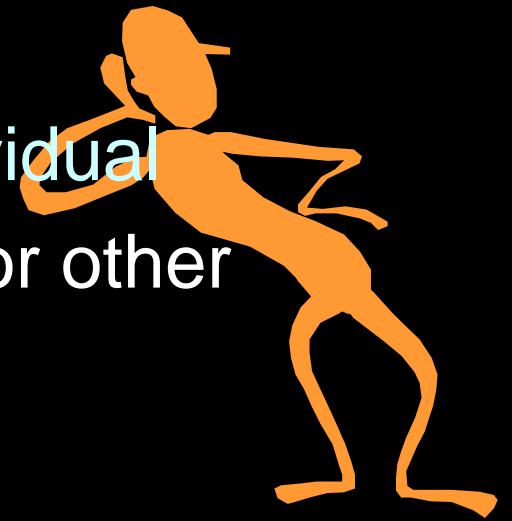
# Privacy Act of 1974

(5 U.S.C. Section 552a, 1988)

- Limits collection of personal information
- No *secret* Government record systems
- No *secret use* of Government records
- Right to see and correct one's own records
- *Safeguards* for the security and accuracy
- Civil and Criminal remedies

# When is it a PA Records System?

- Group of records (more than one)
- Contains information about an individual
- Designed to be retrieved by name or other Personal Identifier



# Privacy Act Record

- “any item, collection, or group of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.” 5 U.S.C. § 552a(a)(4)

## *Privacy Act covers:*

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- U.S. citizens
- Resident aliens

## *Privacy Act does NOT cover:*

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- Non-resident aliens
- The deceased
- Organizations

# Limit Collection of Information

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- Relevant
- Necessary to carry out an Agency function
- SSN -- only when legally authorized
- Inform individual of purpose and use of records collected: Privacy Act Notification Statement

# Social Security No.

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- Upon collection, must state whether:
  - » disclosure is **mandatory or voluntary**,
  - » by what **statutory or other authority** such number is solicited, and
  - » what **uses** will be made of it
- May not deny any right, benefit, or privilege provided by law due to refusal to provide SSN unless the SSN is required by federal statute



# No Secret Government Records

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- Publish a Privacy Act System Notice in the Federal Register 40 days before collecting data
- System Notice: brief description of the type of record system and how the Government intends to manage and protect the system

# Parts of a System Notice

- Number
- Name
- Security classification
- Location
- Who it covers
- Types of records
- Authority for collection
- Purpose of system
- Routine uses: 3rd party disclosures
- Storage
- How information is retrieved
- Safeguards: Authorized users, physical and procedural safeguards
- Retention and Disposal
- System Manager(s) address
- Notification procedure
- Record access procedure
- Contesting record procedure
- Record source categories
- Exemptions

# Notification Statement Sample

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## Medical Services Application

Name \_\_\_\_\_ SSN \_\_\_\_\_

- Date of last physical \_\_\_\_\_
- Results \_\_\_\_\_

## PRIVACY ACT NOTIFICATION STATEMENT

- 1 Government Authorization (Statue or Exec. Order)
- 2 Purpose of information collection
- 3 Routine uses for information disclosure
- 4 Is the request voluntary or mandatory
- 5 What effect, if any for not providing information

# Sometimes Secret Records



- Exempt Systems
  - » Investigation Files specifically exempted
- Certificate of Confidentiality
  - » Protects identity of research subjects in case of court order for identification

# No Secret Use of PA Records

System Managers or their designees may disclose records:

- with consent of individual
  - » Get in writing, as narrow as appropriate
- without consent of individual
  - » 12 provisions
  - » (#3 - #12, must keep account, including: Name and address of person/agency to whom disclosure is made, date, nature and purpose)

# 12 Provisions of Disclosure

- Employees with legitimate “*Need to Know*”
- Required under FOIA
- Routine Use (not mandatory)
- Bureau of Census
- Statistical Use (Can’t identify individual)
- National Archives
- Civil or criminal law enforcement
- Compelling circumstances affecting health or safety of individual (must be justified)
- House of Congress (oversight capacity)
- Comptroller General (GAO activities)
- Court Order (Subpoena signed by judge)
- Consumer reporting agency

# Accounting of Disclosures

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- When the request cites the Privacy Act we must keep a record of:
  - » date, nature, and purpose of each disclosure,
  - » name and address of the person or agency to whom the disclosure is made.

# Right to See and Correct Data

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- Subject has degree of control over information government collects on them:
  - » Right to access (except for exemptions)
    - System Manager must reasonably satisfy themselves of an individual's identity
  - » Right to amendment
    - May change only **factual** information
  - » Right to appeal denial of amendment

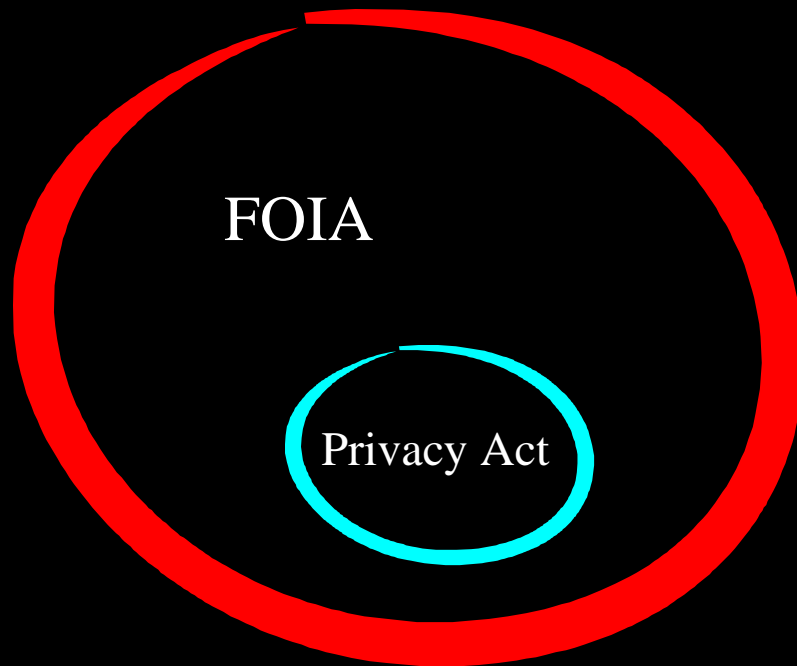


# Safeguards

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- Must collect information from individual, to greatest extent possible
- Establish appropriate administrative, technical and physical safeguards to insure security and confidentiality
- Do risk analysis every 3 years or less

# Relationship to FOIA



- FOIA: 3rd party requests
- Privacy Act: Individual's request for records about themselves

# Relationship to FOIA

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- FOIA Exemption 6 (Personal Privacy)
  - » Parts of files may be withheld if disclosure “would constitute a clearly unwarranted invasion of personal privacy”
  - » Must consider personal privacy interest of individual balanced against the public interest

# Respond to Requests Under Both FOIA and PA

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- Must respond under both FOIA and PA as applicable
- May not use one to withhold disclosure of records if disclosure is required by the other

# Supervisor's Notes

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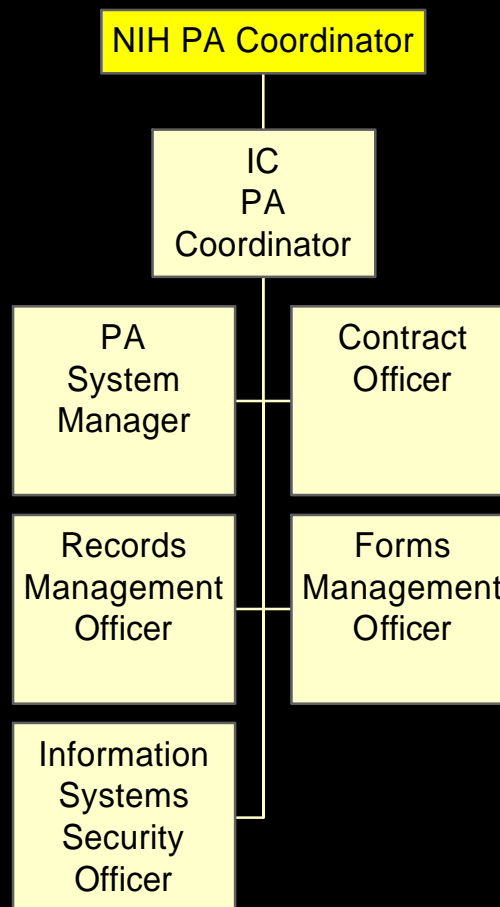
- They are NOT agency records when:
  - » Personal property of supervisor only
  - » Never shared with others (i.e, not circulated)
  - » Never passed to replacement supervisor
  - » memory joggers only
  - » no official uses (i.e., not required by agency)

# Supervisor's Notes

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- Considered part of employee's personnel record (agency record) when:
  - » Used as basis for employment action
  - » Otherwise treated as official Agency records

# Key Players in NIH Privacy Act



# IC Privacy Act Coordinator

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- Coordinates with NIH PA Officer
- Advises IC on PA issues and policy
- Prepares bi-annual PA report
- Prepares new/revised systems
- Coordinates and provides IC level training



# System Manager Responsibilities

- **Tracks location of covered records**
- **Staff Training: inform users of requirements**
- **Security: enforce safeguards**
- **Approve/deny access**
- **Track access and amendments to records**
- **Ensure records are complete/accurate/timely/relevant**
- **Monitor contractor compliance**
- **Follow NIH Records Schedule**
- **Ensure Notification Statement is on data collection forms**
- **Report Requirements: annual updates/reports**

# Records Management Officer

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- All records must be **scheduled**
  - » Knowledgeable of records retention and disposition
  - » Knowledgeable of record medium (usable and readable for life of record)

# Forms Management Officer

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- Advises when data collection form is governed by the PA
- Advises when form requires PA Statement
  - » Coordinates with PA Coordinator on accuracy of statement
  - » Special requirements for use of SSN

# Contract Officer

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- Decide when PA applies to work scope
- If PA applies, contract must:
  - » State that PA applies
  - » List disclosures contractor may make
  - » Contain a list of the established safeguards
  - » Include procedures to monitor contractor compliance (and identify the Govt. Monitor)
  - » Include copy of the System Notice

# Include Contract Clauses

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- If contract covers Privacy Act records, must include contract clauses:
  - » FAR
    - 52.224-1, Privacy Act Notification
    - 52.224-2, Privacy Act

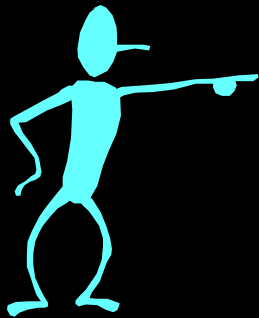
# Information Systems Security Officer

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- Knowledgeable of IC systems on electronic media
- Advises IC on security standards (DHHS Automated Information Systems Security Program Handbook)

# When are Grants Files PA Records?

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- When they are under possession and control of the Federal Government

# Review Documents Flowchart

- |  |    |  |
|--|----|--|
| 1. Documents from Individual Reviewers                                   | →→ | Not “records” - Not in agency control          |
| 2. In-Box of Executive Secretary   | →→ | “Records,” but not part of “system of records” |
| 3. File by Grant No.   | →→ | Not part of Privacy Act system of records      |
| 4. Official Grant File - Summary Statement (filed by name and Grant No.) | →→ | Records and part of PA system of records       |



# Access by Grantee Institutions

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- PI gets full access to his/her grant file
  - » therefore, keep PI files separate
- Grantee Institution gets access
  - » (usually covered as one of the “Routine Uses”)
- All others -- must do FOIA request
  - » May release: title of the project, the grantee institution, principal investigator, abstract, and amount of the award.

# Computer Systems/Files

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10/14/99

# Computer Data: When it is a Record?

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- If a computer system is set up to be used, or is used in practice, to retrieve information by individual identifiers (name, SSN, assigned tracking number) and the system contains personal information, the computer data is covered as a Privacy Act system of records.

# Civil Remedies

- Applies to agency - not individual
- Plaintiff must first exhaust administrative remedies
- Plaintiff must show
  - » a **violation** of the PA
  - » suffering an **adverse effect** as result
  - » agency was **direct or proximate cause** of effect
  - » violation was **intentional or willful**

# Criminal Remedies

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- Applies to individual
- Fine up to \$5000 + court costs
  - » If an officer or employee of agency knowingly releases records improperly to a person not entitled to receive
  - » Willfully maintains PA system without publishing in Fed Reg
  - » Knowingly requests or obtains record about individual under false pretenses

# Summary

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- Must be published System of Records
- Maintain in accordance with FR Notice
- Internal release when valid “Need-to-Know”
- Individuals have right to see and amend facts
- Supervisor’s notes covered = agency action
- Grants records covered when under Govt control
- Contracts for PA records require FAR clauses
- Civil and criminal penalties for non-compliance